

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC, et al.,) Case No. 10-93904-BHL-11
)
Debtor.)

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND
SETTLEMENT WITH GARY SEALS**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC ("Debtor" or "Eastern"), by counsel, respectfully moves the Court for approval of a compromise and settlement of claims by and between the Trustee, Gary Seals d/b/a Gary Seals Livestock ("Seals") and Fifth Third Bank ("Fifth Third") (collectively, the "Parties"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Gary Seals is a Dunlap, Tennessee cattle merchant who served as a branch manager for the Debtor. Seals bought and sold cattle for Eastern's account as well as for his own cattle farm.

2. Since December 2010, the Trustee, with the assistance of Receiver Elizabeth Lynch, other forensic accounting experts at DSI, and counsel, has investigated the merits of possible claims that the Trustee could assert against Seals. During the spring of 2011, the Trustee concluded that sufficient merit existed to pursue claims related to the Debtor's early November 2010 directed transfers to Seals of approximately \$1.3 million in endorsed customer checks. The Trustee also suspected that additional claims could exist related to other pre-petition transfers.

3. Seals cooperated with the Trustee's investigation. Seals, however, disputed the Trustee's claims and maintained that he was unaware of and not directly involved in the check deception and inventory fraud scheme perpetrated by the Debtor's former officers. Seals also provided information to support set off claims related to money and livestock services that he provided to Eastern. Because of Seals' long and close association with Eastern's business, there also exists a real potential for claims between Seals and Fifth Third.

4. The Trustee negotiated with Seals' representatives during the summer and fall of 2011, however, no agreement was reached. With the Court's approval, Phillip L. Kunkel was retained by Seals and the Trustee to mediate their dispute. On April 23, 2012, Mr. Kunkel, the Trustee, Seals, and their counsel traveled to Louisville for a marathon negotiating session. The mediation resulted in a compromise that the Trustee expects will provide a large recovery to the Debtor's estate of at least \$1,375,000.

5. To avoid the significant cost, expense and delays inherent in litigating the disputes and claims described above, the Trustee is authorized to report to the Court that the Parties now desire to settle the disputes with Mr. Seals upon the terms and conditions set forth in the Settlement Agreement attached as Exhibit A ("Settlement Agreement").

The Settlement

6. The Trustee requests that the Court approve the Settlement Agreement, the most significant provisions of which are as follows:

a) The Settlement Agreement is contingent upon the Court's entry of a final order approving the Settlement Agreement.

b) Upon the Court's entry of a final order approving the Settlement Agreement, Seals' counsel will deliver the following to the Trustee: (i) the \$250,000 deposit he currently is holding in trust, and (ii) a non-interest bearing

promissory note (the "Note"), which shall be payable in eighteen (18) consecutive monthly principal installments of \$75,000.

c) If Seals makes each of the first fifteen (15) payments on the Note within ten (10) business days of their due date, then the last three (3) installment payments will be waived. In addition, Seals shall be entitled to the same credit if the Note is ever prepaid and if no prior monthly installments required by the Note were late by more than ten (10) business days.

d) The Trustee and Fifth Third shall release their claims against Seals, and Seals shall release his claims against the Trustee and Fifth Third.

7. Pursuant to Federal Rule of Bankruptcy Procedure 9019, this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

8. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

9. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The Settlement Agreement is the result of a mediated and arms-length settlement conference after months of research, investigation, and negotiation. The alternative to the settlement is litigation of complex and fact-intensive claims between the Parties, and the possibility of an outcome that would result in a smaller recovery to the estate.

10. The Trustee therefore believes that the proposed settlement is fair and equitable and in the sound exercise of his business judgment.

11. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely-filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on June 20, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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